IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7980 OF 2003

Gopal Sadashiv Gokhale & Ors. .. Petitioners.

Versus

Krushna Shankar Tonape & Anr... .... Respondents.

Ms. Geeta Mulekar for the Petitioners.

Mr. V. S. Gokhale for Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 28, 2005.

P.C.:

The petitioners have challenged the order of the appellate court dismissing their appeal against the impugned decree and judgment dated 3rd October, 2000. By the earlier decree, the Civil Judge, Junior Division, Daund, decreed the suit of the Respondent No.1, Krushna Shankar Tonape and directed the tenant Shrikrushna Ragunath Bhide to handover possession of the suit premises.

2. One fact is clear and admitted on behalf of the respondents that there is no operative decree against

the petitioners and it is only the respondent No.2 who has been evicted from the premises and has been directed to deliver possession to the respondent No.1.

3. Mrs. Mulekar, learned Counsel for the petitioners, submitted that the decree could not have been validly passed in favour of Tonape, the respondent No.1 because his title to the suit premises is under clout. According to the learned Counsel, Tonape purchased the property from the sister of the petitioners when a suit was pending between the petitioners and their sister regarding the very same property. In fact, according to the learned Counsel an injunction was operating when the property is said to have been sold by their sister to Tonape. The learned Counsel, however, fairly accepted the fact that the second appeal bearing Second Appeal No. 591 of 2002 arising out of the suit between the petitioners on one hand and their sister and purchaser Tonape on the other is pending. The petitioners obviously would be entitled to raise this grievance and have raised their grievance in that second appeal. This position is accepted by Mr. Gokhale, learned Counsel for respondent No.1.

4. In this view of the matter, there is no reason to entertain this petition and generate multiplicity of proceedings. This writ petition is, therefore, dismissed.

Sd/-

S. A. BOBDE, J.